

U.S. District Court No. 03:18-cv-02741-C (BT)

CCA Writ No. WR-87,656-01

State Dist. Ct. Writ No. F-14-75983-S (A)

Brandon Donya Hughes

v.

Lorie Davis, Director, TDCJ-CID

**In the United States District Court for the
Northern District of Texas, Dallas Division**

Motion to Supplement State Court Record

TO THE HONORABLE JUDGE OF THIS COURT:

COMES NOW, Brandon Donya Hughes, Petitioner in the above styled and numbered cause, by and through his undersigned attorney, David A. Schulman, and moves the Court to supplement the record from the state court *habeas* proceedings. In support of such, Petitioner would respectfully show the Court as follows:

Referenced as Exhibit “F” in the memorandum in support of the amended *habeas corpus* application, were medical records which were contained in the file provided to the undersigned by Hank Judin, Petitioner’s trial counsel. Subsequent to initial filing of his *habeas corpus* application in state court, on July 25, 2017, Petitioner submitted a DVD containing the medical records to the

trial court with a proposed unopposed order filing the medical records under seal.

During the evidentiary hearing conducted on February 16, 2018, Petitioner tendered a DVD with trial counsel's file, including the medical records, for admission (Evidentiary Hearing RR Vol. 2, P. 5, L. 6-15). Although the State indicated it had no objection to the admission of the exhibit, and the records contained on the exhibit were discussed at length in the hearing, it is only recently that the undersigned learned that the court master presiding over the hearing never admitted them into evidence.

Additionally, the undersigned has checked with the office of the Court of Criminal Appeals' Clerk and has ascertained that (a) the physical records from the habeas corpus proceedings in case number WR-87,656-01 have already been destroyed. All that remains is a photograph of the DVD with Hank Judin's file and the medical records contained therein. Finally, it also appears that the state court records submitted to this Court on January 16, 2019, did not contain a copy of the DVD in question.

Accordingly, Petitioner now submits a true and correct copy of the DVD of attorney Hank Judin's case file, "burned" on February 14, 2018, in preparation for submission at the

evidentiary hearing two days later. The undersigned submits, as an officer of the Court, that the DVD contains a complete copy of the file provided by Mr. Judin and scanned by personnel in the undersigned's office in May of 2017. Moreover, the undersigned asserts that a true and correct copy of this DVD was sent to Mr. Judin on May 22, 2017.

Three copies of the DVD will be forwarded to the District Clerk, so that copies may be provided to the Court. A copy will be delivered to the office of the Attorney General of Texas.

Certificate of Conference

This is to certify that the undersigned has conferred with Assistant Attorney General, Jessica Manojlovich, regarding this motion. Ms. Manojlovich represented the following to the undersigned:

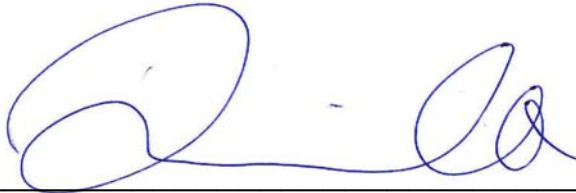
The Director does not oppose the motion to expand the record with respect to those documents on the DVD that were explicitly referenced, or relied upon, by either Nurse Lovvorn in her testimony at the state habeas hearing, or the state habeas trial court in its findings of fact. The Director does object to the motion to expand the record to include any documents on the DVD that do not meet the exceptions in the previous sentence, pursuant to 28 U.S.C. § 2254(d)(2) & (e)(2). The Director does not stipulate to the authenticity of the records, concede that the information contained within the records is true, or

admit that the records would have been admissible at trial.

Prayer

WHEREFORE, PREMISES CONSIDERED, Petitioner, Brandon Donya Hughes, respectfully prays that this Honorable Court will grant his motion to supplement the record in all things and Order the DVD this day submitted to the Court via surface mail be included in the record of the case.

Respectfully submitted,



David A. Schulman

Attorney at Law

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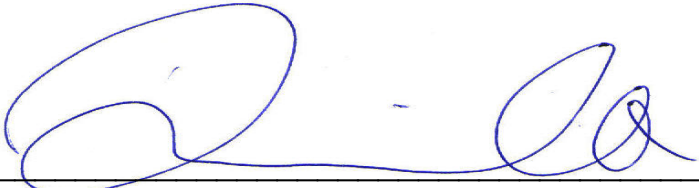
eMail: zdrdavid@dauidschulman.com

State Bar Card No. 17833400

Attorney for Petitioner, Brandon Donya Hughes

Certificate of Delivery

This is to certify that on March 14, 2019, a true and correct copy of the above and foregoing document was transmitted via electronic mail (*eMail*) to Assistant Attorney General, Jessica Manojlovich (Jessica.Manojlovich@oag.texas.gov), counsel of record for the Director.



David A. Schulman